



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Rulemaking for Adoption of a General
Order and Procedures to Implement the
Digital Infrastructure and Video
Competition Act of 2006.

R. 06-10-005
(Filed October 5, 2006)

**REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES
ON THE SCOPING MEMO FOR PHASE II**

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I. INTRODUCTION AND SUMMARY

Pursuant to Rule 14.3(d) of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure and the schedule set forth in the Scoping Memo for Phase II and Request for Comments issued May 7, 2007 (Scoping Memo), the Division of Ratepayer Advocates (DRA) submits these Reply Comments. DRA's Reply Comments address two issues concerning state video franchise holders with less than one million telephone customers: (1) Public Utilities (PU) Code § 5890(e) build-out requirements; and (2) case-by-case reasonableness review. Silence on any particular issue does not represent agreement or disagreement with the arguments associated with that issue.

II. DISCUSSION

A. Build-Out Requirements for State Video Franchise Holders With Less Than One Million Telephone Customers

In our Opening Comments, DRA recommended that the Commission establish low-income benchmarks for state video franchise holders that have fewer than one million California telephone customers that are similar to the benchmarks established in § 5890(b) for franchise holders with more than one million telephone customers. We pointed out that § 5890(a) makes no distinction between state video franchise holders based on the number of telephone customers, and thus, there is no compelling reason why the Commission should establish different low-income benchmarks for franchisees with less than one million telephone customers than for those with more than one million telephone customers.

For the same reasons, DRA recommends that the Commission extend the build-out requirements of § 5890(e), which are established for franchisees with more than one million telephone customers, to those providers with less than one million customers. Section 5890(e) states as follows:

(e) For holders or their affiliates with more than 1,000,000 telephone customers in California, either of the following shall apply:

(1) If the holder is predominantly deploying fiber optic facilities to the customer's premise, the holder shall provide access to its video service to a number of households at least equal to 25 percent of the customer households in the holder's telephone service area within two years after it begins providing video service under this division, and to a number at least equal to 40 percent of those households within five years.

(2) If the holder is not predominantly deploying fiber optic facilities to the customer's premises, the holder shall provide access to its video service to a number of households at least equal to 35 percent of the households in the holder's telephone service area within three years after it begins providing video service under this division, and to a number at least equal to 50 percent of these households within five years.

A number of other parties, in their Opening Comments, also recommend that the Commission require the same build-out requirements for the small providers as those established in DIVCA for the larger providers. Greenlining recommends that “the Commission require identical build-out requirements.”¹ Joint Consumers similarly “believe that the build-out requirements for franchise holders with fewer than one million telephone customers should be parallel to those established by DIVCA for those with more than one million customers.”² CCTA similarly comments that there is no rational basis for adopting a different or lower standard for small franchisees.³ Moreover, the Commission should require franchisees with less than one million telephone customers to comply with Section 5890(e) build-out requirements, which are established for franchisees with more than one million customers.

¹ Greenlining Comments at 1.

² Joint Consumers Comments at 1.

³ CCTA Comments at 2.

B. Case-by-Case Review

In addition to the safe harbor standards, the Scoping Memo also seeks comment on an alternative mechanism - a case-by-case review. According to the Scoping Memo, this mechanism would apply to a franchise holder who is not able to meet any of the Commission's safe harbor standards and would be a reasonableness determination review based on that individual franchise holder's unique circumstances.⁴

DRA notes that there may be a number of situations in which small telephone companies wishing to provide video service may face problems meeting the build-out requirements and thus would require a case-by-case review as follows:

- ***Timeline*** -- The franchisee may be unable to meet the Commission's required "reasonable time" timelines for overall video network build-out;
- ***Redlining*** -- The franchisee may not be able to comply with socioeconomic anti-discrimination provisions similar to those specified in DIVCA for large companies (providing telephone service to over one million customers), due to local telephone service area demographics;
- ***High-Cost Video Areas*** -- The franchisee may opt to not deploy video in certain high-cost portions of its telephone service area under the "substantially above average cost" exemption.

In these instances, in which the Commission must perform a case-by-case review of small franchisees' requests for waivers to the build-out compliance rules, DRA recommends that the Commission apply the following rules:

1. The burden should be on the franchisee seeking a waiver to demonstrate a compelling need for the waiver;
2. A public process, including public/community meetings, should be initiated during which local customers, community organizations, and public officials, as well as Commission representatives, have the opportunity to examine all pertinent evidence and make recommendations; and

⁴ Scoping Memo at 3.

3. Any waiver request should include clear data, made publicly available by the franchisee, to explain as needed:

- Cost issues of a video build-out;
- Technological options considered, and
- Estimated costs or timelines of technological options, along with the impact of those technological choices on available services.

DRA believes public access to the process of any case-by-case waivers provides a positive mechanism for dialogue between communities and local telephone and/or video service providers concerning options for services and devising cost-effective means of meeting local needs.

If a franchisee is, however, only seeking a time extension to comply with the build-out requirements and not a waiver, that franchisee should not be required to undergo a public process, as in Rule #2, as long as it presents a definitive plan of action to the Commission to complete its build-out by a reasonable date. If no such definitive plan is presented to the Commission, or a previously approved plan was not completed on time, the public process should then be required.

III. CONCLUSION

For the foregoing reasons and for the reasons set forth in our Opening Comments, the Commission should adopt DRA's proposed safe harbor and case-by case standards for state video holders with fewer than one million telephone customers. The Commission should also require holders to provide subscribership and pricing information for video service.

Respectfully submitted,

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June 15, 2007

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **“REPLY
COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON THE
SCOPING MEMO FOR PHASE II”** in **R.06-10-005** by using the following
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Dated at San Francisco, California this **15th** day of **June**, 2007.

/s/ ANGELITA MARINDA

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